

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CINDY LOU DOMINOWSKI,

Defendant-Appellant.

UNPUBLISHED

June 14, 2005

No. 253118

Midland Circuit Court

LC No. 03-001571-FH

Before: Owens, P.J., and Cavanagh and Neff, JJ.

PER CURIAM.

Defendant appeals as of right from her jury trial conviction for embezzlement by an agent of \$1,000 or more, but less than \$20,000, MCL 750.174(4)(a). Defendant was sentenced to forty-five days in jail and sixty months of probation. We affirm.

Defendant's sole issue on appeal is that there was insufficient evidence to support her conviction for embezzlement. We disagree. When reviewing a claim of insufficient evidence, this Court reviews the record de novo. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). This Court reviews the evidence in the light most favorable to the prosecutor and determines whether a rational trier of fact could find the essential elements of the crime proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). The Court should not interfere with the jury's role of determining the weight and credibility of witnesses, but must draw all reasonable inferences and resolve credibility choices in support of the jury's verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). The elements of embezzlement by an agent are:

(1) the money in question must belong to the principal, (2) the defendant must have a relationship of trust with the principal as an agent or employee, (3) the money must come into the defendant's possession because of the relationship of trust, (4) the defendant dishonestly disposed of or converted the money to his own use or secreted the money, (5) the act must be without the consent of the principal, and (6) at the time of conversion, the defendant intended to defraud or cheat the principal. [*People v Lueth*, 253 Mich App 670, 683-684; 660 NW2d 322 (2002), citing *People v Collins*, 239 Mich App 125, 131; 607 NW2d 760 (1999).]

Defendant argues that the prosecution offered no evidence that defendant took the money of her then-employer, A. S. Arbury Insurance (“the agency”). Defendant argues that no investigation was done of the other two employees who had the same access to the computer program as defendant, and that a reasonable doubt existed regarding whether defendant actually converted any of the money to her own use. While the prosecution must prove the elements of the crime beyond a reasonable doubt, it is not obligated to disprove every reasonable theory consistent with innocence. *Nowack, supra*, p 400. The prosecution “need only convince the jury ‘in the face of whatever contradictory evidence the defendant may provide.’” *Nowack, supra*, p 400, quoting *People v Konrad*, 449 Mich 263, 273 n 6; 536 NW2d 517 (1995).

The prosecution’s theory of embezzlement rested on the fact that defendant was in charge of receiving the agency’s receipts before they were sent to the bank, receiving funds obtained through the bank after deposits were made, and reconciling the bank statements with the general ledger. Defendant had been in charge of the bank reconciliation, which was where the discrepancies were found. The agency’s outside CPA testified that her reconciliation of the general ledger with bank statements revealed that there had been twenty-two separate instances of receipts recorded in the general ledger that were never deposited in the bank accounts.

There was evidence that management relied on defendant, through a relationship of trust as an employee, to properly carry out her work tasks, and evidence that defendant diverted funds in the process. Defendant had the “full one hundred percent trust” of the agency; defendant had worked for one of the two owners of the agency for fifteen or sixteen years, and he testified that he “had no reason to think that [he] had to double check her work.”

Defendant argues that the evidence was consistent with the theory that one of the owners was pocketing money while going to or coming back from the bank. However, the CPA testified that if that were the case, the person reconciling the bank record and the general ledger would have noted the discrepancies and notified the agency. Defendant never did so. Instead, apparently fictitious, unaccounted for entries were made.

Defendant also argues that there was insufficient evidence of diversion of funds “for her own use.” This argument lacks merit. The prosecution presented evidence that some of the unaccounted for ledger entries were for payment of insurance premiums for defendant’s family’s insurance. A rational jury could conclude that this diversion was for defendant’s own use. There was evidence that money was diverted from the company’s account, and a logical inference would be that it was put to personal use by the embezzler. The CPA testified to (1) discrepancies between receipts indicated on the general ledger and amounts that made it into the bank accounts; and (2) alleged bank transfers to cover insurance premiums for defendant’s family’s insurance that were never received. The jury was the judge of the credibility of witnesses, and the jury evidently chose to credit the CPA’s testimony. *Nowack, supra*, p 400.

There was also circumstantial proof of intent to defraud. The proofs of cover-up entries in the general ledger made it look like the ledger reconciled with the bank statements, when in reality there were discrepancies. When defendant’s successor requested that the two go over the process of reconciling the bank records and the agency’s ledger, defendant acted nervous and “wanted to, perhaps, take them home with her to finish reconciling and, you know, looking over the records at home.” Defendant did not return to further train her successor. Moreover, defendant never brought the discrepancies to her employer’s attention. The CPA testified that

“those deposits had actually been cleared off the reconciliation.” “The person that is doing the reconciliation [i.e., defendant] would be clearing those things off or making some sort of entry to cover it or to make it balance.”

The prosecutor need not disprove every plausible theory in order for the verdict to be supported by sufficient evidence. *Nowack, supra*, p 400. A rational trier of fact could find all the elements of embezzlement proven beyond a reasonable doubt.

Affirmed.

/s/ Donald S. Owens
/s/ Mark J. Cavanagh
/s/ Janet T. Neff